Supreme Court, U.S.
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In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

Barry F. Scanlon, *Petitioner*,

v.

State Bar of Georgia, *Respondents*,

On Petition for a Writ of Certiorari to the
Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

Pro se

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QUESTION PRESENTED

Whether an individual, after filing a formal grievance against an attorney with that attorney's state bar association alleging numerous violations of that state bar associations disciplinary standards, has standing to bring a mandamus action to compel the state bar association and its officers to follow the explicitly mandated procedures which regulate the processing of the grievance.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Barry F. Scanlon respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Georgia in this case.

OPINIONS BELOW

The Supreme Court of Georgia's decision (App., *infra*, 1a-3a) is unreported.

JURISDICTION

The Supreme Court of Georgia entered its judgment on June 6, 1994 (App., *infra*, 1a). On August 31, 1994, Justice Kennedy signed an order extending the time for filing this petition for certiorari to and including October 4, 1994.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The fourteenth amendment to the United States Constitution states, in relevant part, "...nor shall any state deprive any person of life, liberty, or property without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In October of 1985, the Petitioner filed for divorce from his ex-spouse. The court relied upon the advice of a court appointed *guardian ad litem* to determine who, in the best interests of the children, would be the primary custodial parent of the couples two children. In August of 1987, the "final judgment and decree of divorce" was entered. Based upon the *guardian ad litem*'s advice, Petitioner was denied custody of the children, and they the opportunity of having Petitioner as custodial parent, and Petitioner and children were granted only very limited and logistically burdensome visitation rights.

In late 1989, a hearing was conducted by the Ethical Committee of the Georgia Psychiatric Physicians Association[1] to investigate alleged ethical violations of the *guardian ad litem* during the Petitioner's divorce and custody proceeding.[2] During that hearing, and in the proceedings leading to it, the *guardian ad litem* recanted and altered the testimony he had given at Petitioner's divorce and custody proceedings relevant to a direct and immediate

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[1]The ethical committee of the *guardian ad litem*'s professional body.

[2]The appointment of the psychiatrist as the *guardian ad litem* and the acceptance of the *guardian ad litem*'s recommendation was based upon his testimony, to the court and Petitioner's attorney, regarding his impartiality and qualifications.

conflict of interest in his appointment as *guardian ad litem*.[3] Prior to these hearings, Petitioner did not know the ex-spouse's attorney's ("Attorney") knowledge, solicitation, or participation with the concealment of the *guardian ad litem*'s conflict of interest. Subsequent to these hearings, Petition knew of the conduct of Attorney which allegedly violated the State Bar of Georgia rules.

A. The Proceedings at the State Bar of Georgia

On April 29, 1992, Petitioner filed a grievance detailing the alleged ethical code violations of Attorney with the State Bar of Georgia.[4] On June 9, 1992, the assigned Assistant General Counsel

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[3]Prior and subsequent to his appointment by the court, the *guardian ad litem* concealed from the court and Petitioner's attorney that a close personal friend, with whom he also had business dealings, was also a personal friend of the ex-spouse and was to be one of ex-spouse's witnesses. When the *guardian ad litem*'s conflict of interest was inferred by Petitioner's attorney during a series of questions directed at general credibility concerns, Attorney induced from the *guardian ad litem* a statement under oath that the *guardian ad litem* had fully disclosed the nature of his conflict of interest to the Petitioner's attorney prior to his acceptance by the Petitioner's attorney and the appointment by the court.

During the subsequent psychiatric ethics hearing, in 1989, Petitioner discovered, when the *guardian ad litem* recanted the previous testimony induced by Attorney at the divorce and custody hearing, that the *guardian ad litem* had concealed from Petitioner's attorney and the court, both the direct and immediate conflict of interest and a total lack of prior experience in such proceedings. Petitioner's attorney's sworn affidavit showed that Attorney and *guardian ad litem* both knowingly concealed the true nature of the *guardian ad litem*'s conflict of interest.

[4]In the detailed 29 page memorandum of grievance, supported by hundreds of pages documenting, among other things, the aforementioned fraudulent and recanted testimony, Petitioner explained, demonstrated, and substantiated Attorney's violations of the State Bar of Georgia rules. Petitioner's discovery, in and around late 1988 and early 1989, of Attorney's solicitation, subornation, and participation with the *guardian ad litem*'s deception of the court and Petitioner's attorney, led Petitioner to search the entire court file to evaluate the scope, if possible, of Attorney's unethical

("AGC") for the Office of the General Counsel ("OGC") of the State Bar of Georgia forwarded Petitioner's grievance to Attorney.

Attorney responded to the Petitioner's grievance by writing a letter denying the allegations and asserting that Petitioner's grievance was filed beyond the four year statute of limitations of State Bar of Georgia.

Shortly thereafter, Petitioner replied and reiterated that, pursuant to State Bar of Georgia's statute of limitations, the limitations are tolled for up to two years when the unethical conduct is unknown, and the tolling statute applies to this grievance because the most severe allegations were concealed by an ongoing fraud and only discovered during testimony of the *guardian ad litem* in proceedings conducted in late 1988 and early 1989. In addition, Petitioner referenced AGC to State Bar of Georgia Rule 4-222(a)[5]

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entire court file to evaluate the scope, if possible, of Attorney's unethical practices. The 29 page complaint was born with the discoveries of 1988 and 1989, but grew and included only allegations of violations which could be demonstrated and supported by evidence. Some of the violations did date back to the inception of the divorce and custody proceeding, around 1985.

Although a statute of limitation exists which would impede, not forestall (see footnote 6, *infra*, specifically State Bar of Georgia Rule 4-203 (a)(11)), the grievances relating to facts more then four years before the filing of the formal grievance, the grievances, although potentially unactionable, are no less violations of the State Bar of Georgia ethical code. Furthermore, even if the State Bar of Georgia was unable to discipline such violations, the inclusion of those violations should not have had any effect upon the formal grievance in regards to grievances brought within the limit.

Petitioner's allegations which became known to Petitioner from the testimony of *guardian ad litem* at the psychiatric ethical hearing, are as follows:

(1) knowingly, purposefully and fraudulently misrepresenting material facts to the court, resulting in the appointment of a *guardian ad litem* with clear conflicts of interest and no prior direct experience; and

(2) suborning and countenancing perjured testimony, in at a minimum, of three documented incidents.

[5]State Bar of Georgia Rule 4-222(a) states:
No proceeding under [the State Bar of Georgia Disciplinary Proceedings] shall be brought unless a Memorandum of Grievance has been received at

which vests authority to determine the applicability of the tolling statute, a factual determination, with the Investigative Panel ("IP") of State Bar of Georgia not AGC[6].

On November 16, 1992, AGC dismissed the grievance because AGC believed that the conduct alleged "[did] not appear to fall within the disciplinary jurisdiction" of State Bar of Georgia.

On November 23, 1992, Petitioner responded to AGC's dismissal of the grievance by stating the serious allegations, the respective standards of conduct allegedly violated, the concealed nature which hindered discovery of the alleged violations until late 1988 and early 1989, and the authority of IP in determination of whether the tolling statute applies[7]. Moreover, Petitioner recited to AGC that the role of AGC was one of "screening"[8], and that the

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State Bar of Georgia headquarters or instituted by the Investigative Panel within four years after the commission of the act. ***Provided, however, this limitation shall be tolled during any period of time, not to exceed two years, that...the offense is unknown....*** (emphasis added).

[6]See *Brown v. Brown*, 209 Ga. 620, 75 S.E.2d 13 (1953) (holding that where the sole question regards length of time which has elapsed between accrual of right and institution of action, question as to whether action is barred is one of law; but where there are facts involving fraud and excuses for delay in discovering same, question becomes one of mixed law and fact, and is a proper question for determination for a jury); see also *Cleveland Lumber Co. v. Proctor & Schwartz, Inc.*, 397 F.Supp. 1008 (N.D.Ga. 1975)(holding where facts of fraud are presented as excuses for delay in discovering the fraud, the question is one for the jury).

See also State Bar of Georgia Rule 4-203. Powers and Duties.

(a) In accordance with these rules, the Investigative Panel shall have the following powers and duties:

...

(11) to extend the time within which a complaint may be filed.

[7]See n.5 and n.6, *supra*.

[8]State Bar of Georgia Rule 4-202 (c) states:

Upon completion of its ***screening*** of the grievance, the Office of the General Counsel shall be empowered to dismiss those grievances which are

grievance had meet all of the criteria required by State Bar of Georgia's rules.

On December 21, 1992, AGC sent Petitioner a letter informing Petitioner that the grievance file was closed. In the letter, AGC asserted that the grievance file was closed because: (1) the events "...were known to [Petitioner] or accessible to [Petitioner],"; (2) "[t]here was no attempt or concealing the events,"; (3) Petitioner's claim of applicability of the tolling statute was "without merit"; (4) Petitioner's "willful or negligent ignorance" caused the alleged violations to be unknown; and (5) Petitioner's assertions were "unfounded" and "unjustified".

B. The Proceedings at the Supreme Court of Georgia

On October 20, 1993, Petitioner filed a mandamus with the Supreme Court of Georgia. The mandamus requested that the Supreme Court of Georgia order AGC, OGC, and the State Bar of Georgia, to adhere to the State Bar of Georgia Rules 4-202 (c), 4-203 (a) (11), and 4-222 (a). Further, the Petitioner requested that the Supreme Court of Georgia order OGC to follow its statutorily mandated procedures, remand Petitioner's complaint to IP, and enter other relief aimed at focusing the State Bar of Georgia's disciplinary practice and procedures away from protecting attorneys and toward its mission of actual and functional protection of the public.

The State Bar of Georgia's response to the mandamus asserted that Petitioner lacked standing to bring the mandamus, and

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unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the State Bar of Georgia; provided, however, that a rejection of such grievances by the Office of the General Counsel shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the respondent. Those ***grievances which appear to allege any violation*** of Part IV, Chapter 1 of the State Bar Rules ***shall be forwarded*** to the Investigative Panel or subcommittee of the Investigated Panel according to Rule 4-204.1.(emphasis added).

that AGC's investigation meet the statutory requirements and found that Petitioner's allegations were unfounded, unjustified, and failed to state facts sufficient to invoke disciplinary jurisdiction.

On June 6, 1994, the Supreme Court of Georgia held that Petitioner lacked standing to bring the mandamus and dismissed the mandamus.

REASONS FOR GRANTING THE PETITION

The practice of law is almost exclusively a function of state government. Generally, as the Supreme Court of Georgia has done, the highest court of a state creates and establishes that state's bar association and designates itself as the only court with jurisdiction of the disciplinary board and any person connected in any way with disciplinary proceedings with respect thereto.

Generally, the state's highest court enjoys exclusive jurisdiction over the practice of law within that state, however, when that court fails to ensure that the bar association and its officers follow the regulations which explicitly mandate certain procedures in the processing of a grievance, this Court is the proper forum to enforce the constitutional requirements of the Fourteenth Amendment's protection of due process and equal protection.[9]

Clearly, the exact determination of the pandemic nature of this problem is severely impeded by the confidentiality mandated within attorney disciplinary proceedings and the need for explication from this Court is acute. Since there are clearly systemic reasons why few of the states' highest courts' decisions regarding these matters receive appellate review, this case is a timely and rare opportunity for this Court to appropriately explicate. Moreover, the

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[9]See *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 462-63, 109 S.Ct. 1904, 1909-10 (1989); see also *Sultenfuss v. Snow*, 7 F.3d 1543, 1550 (11th Cir. 1993); and *Saier v. State Bar of Michigan*, 293 F.2d 756, 760 (6th Cir.), *cert. denied*, 368 U.S. 947, 82 S.Ct. 388 (1961).

decision below is erroneous, and the issue that it addresses directly implicates not only the public perception of the legal system, but the actual practice of the law in every state in the Union.

I. The Supreme Court of Georgia's Decision Conflicts in Principle with the Decisions of This Court and Aggravates the Existing Public Confusion

In *Saier v. State Bar of Michigan*[10], the Sixth Circuit explained, in dismissing a civil action brought against the State Bar of Michigan for failure to properly process a grievance, that the proper forum for actions to compel a state bar to conform to and follow its regulations regarding processing procedures was the state's highest court[11]. Contrary to the State of Georgia and the Supreme Court of Georgia's implicit acknowledgment of this responsibility,[12] when Petitioner followed the State Bar of Georgia's rules regarding the filing of a grievance and an officer or officers at State Bar of Georgia failed to conform their conduct to that which was explicitly mandated in the processing of that grievance, the Supreme Court of Georgia abandoned the Petitioner. In direct conflict with the regulatory language, the prior decisions of the Supreme Court of Georgia, and the prior decisions and implications of this Court, the

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[10]See *Saier*, 293 F.2d at 760, *cert. denied*, 368 U.S. 947, 82, S.Ct. 388 (1961).

[11]Moreover, in *Saier*, the Sixth Circuit explicitly instructed individuals who have been denied a mandamus brought in the state's highest court to order the state's bar association and its officers to adhere to the processing procedures of that state's bar association to petition this Court to for a writ of certiorari for review. See *Id.*; see also *Potts v. Honorable Justices of Supreme Court of Hawaii*, 332 F.Supp. 1392, 1395 n.8 (D.Haw. 1971).

[12]See *Carpenter v. State*, 250 Ga. 177, 297 S.E.2d 16 (1982); see also 1983 Ga. Const. Art. IV, Sec. I, Para. IV.

Supreme Court of Georgia dismissed the mandamus.[13]

Succinctly, although other relief was sought, the mandamus was brought mainly to require the State Bar of Georgia and its officers to follow those explicitly mandated processing procedures.[14] Accordingly, the Supreme Court of Georgia's decision that Petitioner lacked standing to require the State Bar of Georgia to institute a disciplinary proceeding[15] did not respond to the gravamen of the mandamus and implicitly conflicted with this Court's prior decisions.

As a result of the fact that the Supreme Court of Georgia, and the highest state court of most if not all States, reserves exclusive power regarding disciplinary decisions and their review, appellate review regarding the issue of standing to require a State or its officers to follow their explicitly mandated bar association grievance processing procedures is rare, and the opportunities for this Court to review the issue will be few.

Moreover, as a result of the difficulty of securing appellate review, this Court's prior decisions, disregarded by the implications of the Supreme Court of Georgia's decision, Petitioner has a liberty interest in the State Bar of Georgia and its officers following those explicitly mandated processing procedures.[16] The Court should grant certiorari to review this important conflict and to resolve the resulting confusion.

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[13]See App. at 1a-3a, *infra*.

[14]The mandamus did request for other appropriate relief directed at revitalizing the State Bar of Georgia's mission of protecting the public, preserving the image of the legal profession and requiring AGC and OGC to act in good faith.

[15]See App. at 3a.

[16]See n.9, *supra*.

II. The Decision of the Supreme Court of Georgia Is Erroneous

This Court's decisions teach that the Fourteenth Amendment's protection of procedural due process requires that a State shall not deprive any person of a liberty interest without constitutionally sufficient procedures.[17] The State of Georgia, through the Supreme Court of Georgia and the State Bar of Georgia, created a liberty interest and did not use constitutionally sufficient procedures to deprive Petitioner of that liberty interest.

This Court has consistently ruled that a State creates a protected liberty interest when that State places substantive limitations on official discretion.[18] A regulation places substantive limitations on official discretion when the regulation explicitly mandates that if certain substantive predicates or criteria are satisfied then a particular outcome must follow.[19] Moreover, the use of the word "shall" in connection with the establishment of specified substantive predicates or criteria limiting official discretion means that the State has created a liberty interest.[20] Once a State has created a liberty interest, the procedures attendant upon the deprivation of that interest must be constitutionally sufficient.[21]

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[17]See *Board of Regents of State College v. Roth*, 408 U.S. 564, 571, 92 S.Ct. 2701, 2706 (1972); see also *Hewitt v. Helms*, 459 U.S. 460, 472, 103 S.Ct. 864, 871 (1983).

[18]See *Olim v. Wakinekona*, 461 U.S. 238, 249, 103 S.Ct. 1741, 1747 (1983).

[19]See *Thompson*, 490 U.S. at 463, 109 S.Ct. at 1910.

[20]See *Hewitt*, 459 U.S. at 472, 103 S.Ct. at 871.

[21]See *Id.*

A. The dismissal of the grievance was a constitutionally insufficient deprivation.

State Bar of Georgia Rule 4-222(a) uses the word "shall" to explicitly mandate that the statute of limitation must be tolled when the offense alleged within the grievance is unknown by the individual bringing the grievance.[22] Moreover, it is well established in prior decisions of the Supreme Court of Georgia and the Federal District Court for the Northern District of Georgia that when allegations of fraud are intertwined with a question of an excuse for delay in discovering that fraud a jury should make the determination.[23] Clearly, IP, as the equivalent of the fact finder, not AGC, as a officer mandated to screening the grievances, is the functional equivalent of the prosecutor or trial judge. Furthermore, State Bar of Georgia rules explicitly mandate that IP is vested with the factual determination of extending the time allowed to file the grievance.[24]

Although AGC, on behalf of OGC, might have been granted discretion to dismiss a grievance if that grievance was being brought outside the statutory limits without allegations of fraudulent concealment, the validity of the allegations of fraudulent concealment, which excused the delay in discovery of the offense and made the tolling statute applicable, was a determination explicitly mandated to be made by IP not OGC.[25]

Therefore, when AGC, on behalf of OGC and the State Bar of Georgia, dismissed Petitioner's grievance on November 16, 1992, OGC was violating the explicitly mandated processing procedures of

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[22]See n.5, *supra*.

[23]See n.6, *supra*.

[24]See n.6, *supra*.

[25]See n.5 and n.6, *supra*.

the State Bar of Georgia rule.[26] This deprivation of Petitioner's liberty interest was without constitutionally sufficient procedures[27] because AGC was acting beyond its mandated capacity, in violation of the explicitly mandated processing procedures, and did not explain or substantiate the basis or reason for its decision to dismiss the grievance. Consequently, the Supreme Court of Georgia's failure to order AGC, on the behalf of OGC and the State Bar of Georgia, to follow the explicitly mandated processing procedures of Petitioner's grievance was erroneous.

B. The comments in the closing of the grievance file did not cure the constitutionally insufficient deprivation.

State Bar of Georgia Rule 4-202 (c) uses the word "shall" to explicitly mandate that grievances which "...appear to allege any violation of...the State Bar..." of Georgia's disciplinary rules must be forwarded to IP.[28] After AGC, on behalf of OGC and the State Bar of Georgia, dismissed Petitioner's grievance, the subsequent and retrospective assertions of AGC[29] could not cure AGC's, OGC's and the State Bar of Georgia's, ignorance for its own explicitly mandated rules regarding grievance processing procedures and this Court's prior rulings.[30] AGC was mandated to and should have presented the

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[26]See n.5 and n.6, *supra*.

[27]See *Thompson*, 490 U.S. at 462-63, 109 S.Ct. at 1909-10; see also *Hewitt*, 459 U.S. at 472, 103 S.Ct. at 871.

[28]See n.8, *supra*.

[29] That Petitioner's willful or negligent ignorance caused the delay in discovery and that the grievance lacked of merit.

[30]See *Thompson*, 490 U.S. at 462-63, 109 S.Ct. at 1909-10; see also *Saier*, 293 F.2d at 760, *cert. denied*, 368 U.S. 947, 82 S.Ct. 388; and *Board of Regents of State College*, 408 U.S. at 571, 92 S.Ct. at 2706; and *Hewitt*, 459 U.S.at 472, 103 S.Ct.at 871.

grievance to IP because the only explanation given substantiating the dismissal was beyond the scope of AGC's mandate[31] and was incorrect.[32]

Therefore, when AGC, on behalf of OGC and the State Bar of Georgia, closed the grievance file, AGC was violating the explicitly mandated processing procedures of the State Bar of Georgia rules.[33] Thereafter, the Supreme Court of Georgia's failure to order AGC, on the behalf of OGC and the State Bar of Georgia, to follow the explicitly mandated processing procedures of Petitioner's grievance was erroneous.

C. Petitioner has standing to bring a mandamus to require AGC, on the behalf of OGC and the State Bar of Georgia, to adhere to the explicitly mandated processing procedures of the State Bar of Georgia.

Accordingly, in light of the decision in *Saier*[34] and the language of the State Bar of Georgia's rules regarding grievance processing procedures, AGC, on the behalf of OGC and the State Bar of Georgia, could not act capriciously or arbitrarily in depriving Petitioner of his liberty interest in having his grievance properly and fairly processed without constitutionally sufficient procedures. Consequently, this Court should grant Petitioner's petition to correct this erroneous decision.

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[31]See n.6, *supra*.

[32]See n.5, *supra*.

[33]See n.5 and n.6, *supra*.

[34]See *Id.*, 293 F.2d at 760.

III. The Question Presented Is Important

The principle reason for procedural safeguards is to prevent inaccurate decisions. As this Court's previous decisions infer[35] and contrary to the implications of the Supreme Court of Georgia, once the State of Georgia chose to extend the right to formally file a grievance with the State Bar of Georgia against one of its members, upon Petitioner and all other citizens who believe they have been subjected to the unethical practices of one of the State Bar of Georgia members, the State of Georgia, through the State Bar of Georgia, may not withdraw that right on grounds that the grievance lacks merit, absent fundementally fair procedures to determine whether that grievance lacks merit.

It is clear that the State Bar of Georgia's rules create the structure by which grievances against members of the State Bar of Georgia are to be handled. Basically, this system is a three tier process by which those grievances are to be processed, investigated, and, if warranted, prosecuted. Although there may be some slight overlap in functions, the State Bar of Georgia rules designate that (1) OGC is the processing tier[36]; (2) IP is the investigative tier; and (3)

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[35]See generally *Thompson*, 490 U.S. 454, 109 S.Ct. 1904 (1975); *Baord of Regents of State College*, 408 U.S. 564, 92 S.Ct. 2701 (1972); *Hewitt*, 459 U.S. 472, 103 S.Ct. 864 (1983); and *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975).

[36]State Bar of Georgia Rule 4-202 (a) states:
All grievances other than those initiated by the Supreme Court of Georgia or the [IP] shall be first filed with the [OGC] of the State Bar of Georgia. The **[OGC]** ***shall require*** that oral grievances, and grievances illegibly or informally drawn, be ***reduced to a memorandum of grievance*** in such form as may be prescribed by the [IP]. (emphasis added).

State Bar of Georgia Rule 4-202 (b) states:
Upon receipt of a grievance in proper form, the [OGC] ***shall screen*** it to determine whether the grievance is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the State Bar of Georgia. The [OGC] shall be empowered to collect evidence and

the Supreme Court of Georgia, through the appointment of a special master, is the prosecution tier.

When Petitioner followed the procedures required by the State Bar of Georgia and met the screening criteria explicitly mandated by the State Bar of Georgia rules, OGC could not ignore its mandate without violating the Fourteenth Amendment protections due Petitioner and creating public and official confusion regarding these grievances. Moreover, when the Supreme Court of Georgia implicitly denied Petitioner's right to challenge such a constitutionally insufficient deprivation, the Supreme Court of Georgia disregarded both the instructions and guidelines of *Saier*[37] and the prior decisions of this Court,[38] and left the Petitioner and the Public in complete confusion.

The regulations and rules at issue in this case are actually instructions and directions which the Petitioner and the Public must follow to file a grievance.[39] Likewise, OGC has explicitly mandated instructions which it must follow.

Although it is understood by both the Supreme Court of Georgia and the Petitioner that OGC's processing function has two objectives,[40] AGC, on the behalf of OGC and the State Bar of Georgia, must follow, or be ordered to follow, those explicitly

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and information concerning any grievance and to add the findings and results of its investigation to the file containing such grievance. The ***screening process*** may include forwarding a copy of the grievance to the respondent to order that the respondent may respond to the grievance. (emphasis added).

[37]See *Id.*, 293 F.2d at 760.

[38]See n.35, *supra*.

[39]See n.35, *supra*.

[40]See generally n.8, *supra*, (the State Bar of Georgia rules designed OGC's function as both to maintain the orderly presentation of grievances and to protect the members of the State Bar of Georgia who might be burdened and prejudiced by grievances without merit).

mandated processing procedures regardless of OGC's unexpressed function. Otherwise, the overall mission of the State Bar of Georgia, and all state bars, to promote the best interests of the public by maintaining high standards of conduct in the legal profession, is lost. This Court should resolve the uncertainty created by the decision of the Supreme Court of Georgia and the conduct of the State Bar of Georgia.

In sum, this case presents a rare opportunity for this Court to address the disputed issue of standing to bring a mandamus to order state bar to follow its explicitly mandated processing procedures and to bring much-needed certainty and uniformity to this area. Therefore, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

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No. _____

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In the Supreme Court of Georgia

Decided: June 6, 1994

S94O0090. SCANLON v. STATE BAR OF GEORGIA

BENHAM, Presiding Justice.

In April 1992, Barry F. Scanlon filed a memorandum of complaint with the Office of General Counsel of the State Bar of Georgia, alleging that a member of the State Bar of Georgia had engaged in illegal and unethical conduct in 1986-87 while representing Scanlon's wife during the Scanlons' divorce proceedings. Pursuant to the authority granted under Rule 4-202 (c) of the Rules and Regulations of the state Bar of Georgia, the Office of General Counsel dismissed the grievance after concluding that it did not fall within the disciplinary jurisdiction of the State Bar. Following further correspondence form Mr. Scanlon, the Office of the General Counsel reiterated its decision to dismiss his grievance, citing the four-year temporal requirement of Rule 4-222 and the General Counsel's determination that Scanlon's assertions were "patently unfounded, unjustified and failed to state facts sufficient to invoke the disciplinary jurisdiction of the State Bar of Georgia...." Ten months later, Scanlon, acting pro se, filed in this court a motion to compel enforcement of the State Bar disciplinary standards and proceedings.

1. "Matters relating to the practice of law, including the admission of practitioners, their discipline, suspension, and removal, are within the inherent and exclusive power of the Supreme Court of Georgia. [Cits.]" Carpenter v. State, 250 Ga. 177 (297 SE2d 16) (1982). Pursuant to its inherent power to supervise regulation of the practice of law in Georgia, this court created and established the State Bar of Georgia. Wallace v. Wallace, 225 Ga. 102, 109 (166 SE2d 718) (1969). In a exercise of the concomitant power to make rules for the government of the administrative arm so created (Sams v. Olah, 225 Ga. 497 (4) (169 SE2d 790) (1969)), this court has designated itself as the only court with jurisdiction of the State

Disciplinary Board and any person connected in any way with disciplinary proceedings with respect thereto. State Bar Rule 4-225.[1] See also 1983 Ga. Const. Art. IV, Sec. I, Para. IV.[2]

2. The State Bar is authorized to maintain and enforce standards of conduct to be observed by members of the State Bar and those authorized to practice law in Georgia. State Bar Rule 4-101. Through enactment of State Bar Rule 4-202, this court has empowered the office of the General Counsel of the State Bar to receive and screen grievances filed against members of the State Bar, and to investigate and collect evidence and information concerning the grievances. In light of the prosecutorial nature of this stage of the disciplinary process, the Office of General Counsel's exercise of discretion to dismiss a grievance for the grounds listed in rule 4-202 (c) is analogous to the discretion exercised by a prosecutor in our criminal justice system in deciding which defendants to prosecute and which cases to dismiss prior to indictment. See State v. Hanson, 249 Ga. 739, 743-744 (295 SE2d 297) (1982); Lee v. State, 177 Ga. App. 698 (1) (340 SE2d 658) (1986). A citizen does not have a judicially cognizable interest in the prosecution or nonprosecution of another and, hence, lacks standing to contest the prosecuting authority's policies when the citizen is neither prosecuted nor threatened with prosecution. R.S. v. R.D., 410 U.S. 614, 619 (93 SC 1146, 35 LE2d 536) (1973). Inasmuch as Scanlon lacks standing to seek to have the State Bar institute disciplinary action in a case

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[1] Rule 4-225 is as follows:

> The State Disciplinary Board and any person who is connected with disciplinary proceedings in any way shall not be subject to the jurisdiction of any court other than the Supreme Court with respect thereto, except as provided in Rules 4-214, 4-215, and 4-216 [providing for jury trial of disciplinary proceedings in superior court].

[2] "Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments...."

where the Office of General Counsel has decided not to proceed, his motion is dismissed.

Motion dismissed. All the Justices concur.